

ECF CASE
JUDGE DOLINGER

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

JOE HAND PROMOTIONS, INC., as
Broadcast Licensee of the **June 11, 2005**
Tyson/McBride Program

PLAINTIFF'S MEMORANDUM OF
LAW IN SUPPORT OF DAMAGES
Civil Action No. 07-CV-6907

-against-

RICARDO MARTINEZ, Individually and d/b/a
LUCKY 7,

Defendants.

Plaintiff submits the following in support of its request for an award of damages against
the Defendants, RICARDO MARTINEZ, Individually and d/b/a LUCKY 7.

BACKGROUND

Plaintiff is the owner of the exclusive rights to distribute the June 11, 2005
Program, which were shown as a pay-per-view event in New York and other states, to commercial
establishments. (See Affidavit of Joe Hand Jr., President of Plaintiff, as Exhibit A.) In an effort to
combat piracy of said pay-per-view program, the Plaintiff contracted with an independent auditing
company to investigate commercial establishments that exhibited the June 11, 2005 Boxing Program
without authorization. Among the locations the auditors observed exhibiting the Program without
authority to do so was that of the Defendants Lucky 7. Defendants' display of the event was verified
by independent auditor Edgardo Rodriguez, attached to the Plaintiff's Affidavit. The auditor entered
the Defendant establishment around 9:25 pm, without paying a cover charge and saw one television
set exhibiting a portion the encrypted broadcast to approximately 25 individuals in an establishment

with a capacity of 100.

Plaintiff commenced the present action by filing a Summons and Complaint on July 31, 2007. Copies of the Summons and Complaint were served on Defendants August 18, 2007, as set forth in the proofs of service by William Morrison, which were filed with the Court on August 31, 2007, as ECF document No.5. Defendants never answered said Summons and Complaint. On October 5, 2007, Plaintiff filed a Request for Clerk's Entry of Default which was entered on or about October 5, 2007. A Motion for Default was filed on October 15, 2007. This matter was referred to your honor on, October 25, 2007, for an inquest on damages.

NATURE OF DEFAULT

Defendants' default must be deemed an admission of the facts alleged in the complaint. Greyhound Exhibitgroup v. E.L.U.L. Realty Group, 973 F.2d 155 (2nd Cir. 1992). Plaintiff's complaint establishes the elements of liability required to state a claim under both 47 U.S.C. 553 and 47 U.S.C. 605. Under 553(a)(1) liability exists if a person intercepts or receives or assists in receiving any communication service over a cable system without authorization. Under 605(a) liability hinges on the interception of radio communications and its divulgence to any person. Defendants herein, by their default, have admitted that, without authorization from Plaintiff, they illegally intercepted the scrambled transmissions of the Program. Defendants have also admitted that knowingly and wilfully intercepting the programming, and offering it to patrons of the establishment for private financial gain or commercial advantage.

Plaintiff, by contract, was granted the right to distribute the boxing program scheduled for June 11, 2005, via closed circuit television. Pursuant to the aforesaid contract, Plaintiff entered into subsequent agreements with various entities in the State of New York, allowing them to publicly exhibit the program to their patrons. Plaintiff expended substantial monies in consideration of the

aforementioned agreement to transmit the said boxing match to those entities within the State of New York who had contracted for same with the Plaintiff for exhibition to their patrons.

The Defendants and/or his/its/their agents, servants, workmen or employees, with full knowledge that said closed circuit program was not to be received and/or exhibited by entities unauthorized to do so, did, at the time of its transmission, exhibit the closed circuit program at their principal place of business willfully, and for purposes of direct or indirect commercial advantage or private financial gain and with the intent of willfully defrauding Plaintiff of revenue.

The event in question originated via a satellite uplink and was subsequently re-transmitted to cable systems and satellite companies via satellite signal. Under Cablevision v. Sykes, 75 F.3d 123 (2nd Cir. 1996) piracy of a signal originating this way is a violation of 605(a). Because Plaintiff distributed the event via closed circuit cable television, piracy of their signal is also a violation of 553(a)(1). Cablevision v. Sykes, 997 F.2d 998 (2nd Cir. 1993). Defendant must have either used an illegal satellite receiver to intercept Plaintiff's signal, or used an illegal cable converter box to intercept Plaintiff's broadcast. This establishes Defendants' liability under both 553 and 605. Entertainment by J&J v. Mama Zee, 2002 U.S. Dist. LEXIS 13686 (E.D.N.Y.).

DAMAGES

When a Defendant is liable under both §§553 and 605 of the Federal Communications Act, Plaintiff can recover under only one section. Time Warner v. Taco Rapido, 988 F. Supp. 107 (E.D.N.Y. 1997). Plaintiff elects to recover under 605(a). A claimant who has established liability under 605(a) may elect between actual or statutory damages under 605(e)(3)(C)(i). Plaintiff elects for statutory damages pursuant to 605(e)(3)(D)(i)(II). Under 605(e)(3)(C)(ii) enhanced damages are available where the violation was willful and was committed for direct or indirect commercial

advantage or private financial gain. As the Defendants exhibited the event in a commercial establishment, Plaintiff has pleaded the elements to establish a willful violation. Ent. By J&J v. Mama Zee's, 2002 U.S. Dist. LEXIS 13686 (E.D.N.Y.).

Pursuant to 47 U.S.C. §605(e)(3)(C)(i)(II), Defendants are indebted to Plaintiff for the unlawful exhibition for commercial advantage of the closed circuit television signal of the Program on May 3, 2003, in the sum of up to \$10,000.00 in the discretion of the Court. Full statutory damages of \$10,000.00 were awarded in Cablevision v. Titan's, 1997 U.S. Dist. LEXIS 2363 (E.D.N.Y.).

In addition, pursuant to 47 U.S.C. §605(e)(3)(C)(ii) Plaintiff is entitled to an additional statutory damage amount of up to \$100,000.00 in the discretion of the Court for the intentional unlawful interception of the closed circuit television signal of the program. Enhanced damages under this provision were awarded in the following cases: Ent. By J&J v. Mama Zee's, 2002 U.S. Dist. LEXIS 13686 (E.D.N.Y.) (\$10,000.00 in enhanced damages), Time Warner Cable v. Taco Rapido Rest., 988 F. Supp. 107 (E.D.N.Y. 1997) (\$5,000 in enhanced damages), Cablevision v. Titan's, 1997 U.S. Dist. LEXIS 23663 (E.D.N.Y.) (\$5,000 in enhanced damages), Cablevisions v. Maxie's, 1991 U.S. Dist. LEXIS 4874 (E.D.N.Y.) (\$25,000 in enhanced damages).

The amount of damages to be awarded rests in the sound discretion of the court pursuant to 605(e)(3)(C)(i)(II). In published cases in the Eastern District of New York, damages have been estimated based on a patron count multiplied by \$50 while in the Southern District the amount has been \$300.00 per patron. Taco Rapido and Mama Zee, citing Kingvision v. Prime Time Saloon, 95 Civ. 1422 (E.D.N.Y.), Cablevision v. Midland, 858 F.Supp. 42 (S.D.N.Y. 1994) used \$50 while Garden City Boxing Club v. Alicia, 04-2084 (S.D.N.Y.) and Garden City Boxing Club v. Martinez, 04-1907 (S.D.N.Y.), Cablevision v. Cateras, 1998 U.S. Dist. LEXIS 22675 (S.D.N.Y.), New Contenders v. Diaz, 1997 U.S. Dist. LEXIS 13132 (S.D.N.Y.), Cablevision v. Midland, 858 F. Supp.

42 (S.D.N.Y. 1994), Cablevision v. Allerton, 1997 U.S. Dist. LEXIS 3553 (S.D.N.Y.) each used \$300 per patron.

In other cases in the Eastern District the Judge simply states an amount. In Cablevision v. Roopnarain, 2002 U.S. Dist. LEXIS 8802 (E.D.N.Y) and Main Events v. Batista, 1998 U.S. Dist. LEXIS 21614 (E.D.N.Y.) full statutory damages of \$10,000.00 were awarded against each defendant. In Cablevision v. Maxie's, 1991 U.S. Dist. LEXIS 4874 (E.D.N.Y.), and Cablevision v. Titan's, 1997 U.S. Dist. LEXIS 23663 (E.D.N.Y.) \$5,000.00 was awarded in statutory damages.

After trial Judge Chin of the Southern District of New York stated the following:

“Some courts considering similar facts have imposed damages based on a fixed amount per patron. See, e.g., *Garden City Boxing Club, Inc. v. Salcedo*, 2005 U.S. Dist. LEXIS 26478, No. 04 Civ. 5027, 2005 WL 2898233 (S.D.N.Y. Nov. 3, 2005) (\$300.00 per patron); *Time Warner Cable v. Goodies Luncheonette, Inc.*, 77 F. Supp. 2d 485 (S.D.N.Y. 1999) (\$50.00 per patron). Others have awarded a flat sum. See, e.g., *Garden City Boxing Club, Inc. v. Guzman*, 2005 U. S. Dist. LEXIS 7954, No. 03 Civ. 8776, 2005 WL 1153728 (S.D.N.Y. Apr. 26, 2005) (\$5,000.00); *Kingvision Pay-Per-View, Ltd. v. New Paradise Rest.*, 2000 U. S. Dist. LEXIS 8792, No. 99 Civ. 10020, 2000 WL 378053 (S.D.N.Y. Apr. 11, 2000) (\$20,000). On motions for entry of default in cases involving this plaintiff and this fight I have awarded statutory damages of \$5,000.00 for a violation of *Section 605 (e)(3)(C)(i)(II)* and an additional \$5,000.00 for violations that were willful and for commercial gain. See, e.g. *Garden City Boxing Club v. Rosa*, No. 05 Civ. 6233 (DC); *Garden City Boxing Club v. Ruiz*, 05-Civ. 3408 (DC).

Here, the commercial rights for the de la Hoya/Hopkins fight would have cost Luischia approximately \$2,000.00. In addition, I find that, more likely than not, one of the reasons defendants exhibited the fight was to realize increased profits from the sale of food and beverages, which profits should be disgorged. Finally, plaintiff is entitled to an enhancement of damages due to my finding that the defendants' conduct was willful and for commercial gain, although I am mindful that defendants run a small business, their profit from exhibition of the fight was likely minimal, and, although the amount of damages should be an adequate deterrent, the violation is not so serious as to warrant

putting the restaurant out of business. Accordingly, I find that an award of an additional \$10,000.00 (for a total of \$12,000.00) is fair and just, in light of all the circumstances.”

See Garden City Boxing Club, Inc.. v. Luis Polanco and Luischia Restaurant Corp., 2006 U. S. Dist. LEXIS 5010 at *15-*17 (S.D.N.Y. February 7, 2006), *aff'd on other grounds*, 2007 U.S. App. LEXIS 8706, (2nd Cir. Apr. 5, 2007).

Enhanced damages are regularly awarded for this type of violation in the Eastern District. In Mama Zee and Batista \$10,000.00 in enhanced damages was awarded based on the willfulness of the act. Similarly in Roopnarian, \$10,000.00 in enhanced damages was awarded based on Defendant's willful disregard of the statute and applicability of the enhanced damages award to the commercial setting. In Titan's and in Taco Rapido only \$5,000.00 in enhanced damages was awarded. In Cablevision v. Maxie's, 1991 U.S. Dist. LEXIS 4873 (E.D.N.Y.) \$25,000.00 in enhanced damages was awarded. In t his instance, Plaintiff has submitted evidence of this Defendant's willful disregard for the law. Attached hereto, as Exhibit "B" is the Affidavit of Costs and Fees, which details the Defendants' additional piracies.

The Court in Entertainment by J&J, Inc. v. Al-Waha Enterprises, Inc., 219 F. Supp. 2d 769, 2002 U.S. Dist. LEXIS 16247 (S.D. Tx. 2002), noted that deterrence is one of the goals of 47 U.S.C. §605 and that to require the offending establishment to pay the price it would have paid had it legally contracted to exhibit the event "would do nothing to accomplish this objective of the statute." Id. at 776. The Court further addressed willfulness in its opinion, awarding enhanced damages:

Based on the limited methods of intercepting closed circuit broadcasting of pay-per-view events and the low probability that a commercial establishment could intercept such a broadcast merely by chance, however, courts have held conduct

such as that of [defendant] in this case to be willful and for the purposes of direct or indirect commercial advantage or private financial gain.

Id. at 776 (citations omitted). The Court noted that “willfulness has been defined by the Supreme Court as ‘disregard for the governing statute and an indifference for its requirements.’”

Cablevision Sys. N.Y. City Corp. v. Lokshin, 980 F. Supp. 107, 114 (E.D.N.Y. 1997) (quoting Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 126, 83 L. Ed. 2d 523, 105 S. Ct. 613 at 613027 (1985)).

The Southern District of New York has held that “Signals do not descramble spontaneously, nor do television sets connect themselves to cable distributions systems.” Time Warner Cable of New York City v. Googies Luncheonette, Inc., 77 F. Supp. 2d 485 (S.D.N.Y. 1999). This premise was also adopted by this Court Roopnarain, decided February 8, 2002, in which Magistrate Judge Azrack gave an additional \$10,000.00 award for wilfulness.

Plaintiff urges that the maximum amount of statutory damages under 605(e)(3)(C)(i)(II), \$10,000.00 be awarded in this case following Mama Zee, Batista and Roopnarain. Plaintiff further urges that substantial enhanced damages be added to it pursuant to 605(e)(3)(C)(ii) of up to \$100,000.00, particularly in light of the fact that Defendant is a repeat violator of the Federal Communications Law. In deference to Plaintiff Counsel’s obligation to zealously represent its client, the prayer below includes a prayer for the full statutory amount available to the Plaintiff.

FEES AND COSTS

The Federal Communications Act provides that full costs, including attorney fees shall be awarded to an aggrieved party who prevails. Joe Hand Promotions, Inc, is an aggrieved party in

this case because it had a proprietary interest in the intercepted communications. Garden City Boxing Club v. Ayisah, 2004 U.S. Dist. 7687 (S.D.N.Y.) Plaintiff has expended filing fees, service of process costs, attorney fees, and investigative expenses pursuing this case. Garden City Boxing Club v. Guzman, 2005 U.S. Dist. LEXIS 7954 (S.D.N.Y.), Kingvision v. Medrano, 2004 U.S. Dist. LEXIS 13282 (S.D.N.Y.), Kingvision v. Recio, 2003 U.S. Dist. LEXIS 10440 (S.D.N.Y.), Time Warner Cable v. Evans, 2001 U.S. Dist. LEXIS 16402(S.D.N.Y.), Joe Hand Productions v. West, 2000 U.S. Dist. LEXIS 15711 (W.D.N.Y.), Main Event v. Batista, 1999 U.S. Dist. LEXIS 2250, 1998 U.S. Dist. LEXIS 21492 (E.D.N.Y.),.

CONCLUSION

Plaintiff is entitled to a default judgment against Defendants holding them liable for a sum, in the discretion of the court of up to the sum \$110,000.00 for violation of 605(a). Plaintiff is also entitled to full litigation costs and attorney fees. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, there is no just reason for delay in these default judgments as the interest of justice require the issuance of judgment as requested without further delay.

WHEREFORE, your deponent respectfully requests that this Court in its discretion grant judgment by default under 605(a) on COUNT I of the Plaintiff's complaint against the Defendants as follows:

Against, RICARDO MARTINEZ, Individually and d/b/a LUCKY 7,

- 1) under 605(e)(3)(C)(i)(II) a *sum in the discretion of the Court*, of up to TEN THOUSAND DOLLARS (\$10,000.00)
- 2) and under 605(e)(3)(C)(ii) a *sum in the discretion of the Court*, of up to ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for enhanced damages for Defendant's willful violation of 605(a)
- 3) and under 605(e)(3)(B)(iii) *in the discretion of the Court*, costs and Attorney fees of ONE THOUSAND THREE HUNDRED SIX DOLLARS AND TWENTY FIVE CENTS (\$1,306.25).

Dated: November 30, 2007
Ellenville, NY 12428

/s/ Julie Cohen Lonstein
Julie Cohen Lonstein, Esq.
Bar Roll No. JL8512
Lonstein Law Office, P.C.
Attorneys for Plaintiff
1 Terrace Hill; PO Box 351
Ellenville, NY 12428
Telephone: 845-647-8500
Fax: 845-647-6277

CERTIFICATE OF SERVICE

The undersigned certifies that on today's date, a copy of the foregoing was served via regular mail upon the following:

Ricardo Martinez
1203 Findlay Avenue
Apt. 33A
Bronx, NY 10456-4143

/s/ Julie Cohen Lonstein.
Julie Cohen Lonstein, Esq.

Exhibit A

ECF CASE
JUDGE DANIELS

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

**JOE HAND PROMOTIONS, INC. , as
Broadcast Licensee of the June 11, 2005
Tyson/McBride Program,**

Plaintiff,

-against-

Plaintiff's Affidavit for Default
Civil Action No. 07-CV-6907
HON. GEORGE B. DANIELS

RICARDO MARTINEZ, *et al.*,
Defendants.

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF BUCKS) ss.:
)

JOE HAND, JR., being duly sworn, deposes and states the following:

1. I am President of Plaintiff, Joe Hand Promotions, Inc., and as such am fully familiar with the facts, circumstances and proceedings heretofore had herein.
2. I make this affidavit in support of Plaintiff's request to recover statutory damages, including litigation fees, investigative costs, and interest in the within request for judgment by default.
3. The Plaintiff purchased the territorial rights to exhibit the Tyson/McBride fight which was held on June 11, 2005. Our company thereafter marketed the sub-licensing of the broadcast in the State of Louisiana for a fee. The agreement for exclusive rights to distribute the said fight is attached hereto as Exhibit "A." The rate card for commercial establishments is attached hereto as Exhibit "B."

4. To explain the history of Plaintiff's claim, your deponent submits that shortly after the advent of Pay-Per-View broadcasts, of which our company stands at the forefront, we began to experience a serious erosion of the sales to commercial establishments throughout the United States of America. Thereafter, we endeavored to find out what was the basis for the erosion. Much to our disappointment, we discovered the root cause to be the piracy of our broadcasts by unauthorized and unlicensed establishments.

5. In response, we embarked upon a program which was designed to identify and prosecute commercial establishments which stole our broadcasts.

6. Joe Hand Promotions, Inc., obtained information from auditors who identified establishments that unlawfully exhibited our Program.

7. Prior to the Tyson/McBride broadcast, Joe Hand Promotions, Inc., hired Signal Auditing, Inc. to contract with independent auditors who were assigned to identify establishments that unlawfully exhibited our Program.

8. To insure that only illegal locations were visited by the auditors, a list of authorized and legal locations who paid the required fee to broadcast the Tyson/McBride fight which was held on June 11, 2005, was distributed to Signal Auditing, Inc., who, in turn, provided same to all of their contracting auditors prior to visiting any unauthorized locations on June 11, 2005. This list for the State of Louisiana is attached hereto as Exhibit "C".

9. Defendant, RICARDO MARTINEZ, Individually and d/b/a LUCKY 7, did not purchase the rights to exhibit the event from my company.

10. According to our files, Edgardo Rodriguez, one of the auditors,

visited Defendant's establishment, Lucky 7, located at 658 Prospect Avenue, Bronx, NY, at approximately 9:25 p.m., on February 3, 2007. He entered and observed one (1) television sets exhibiting a portion of the event to about 25 patrons in an establishment with a capacity of 100. The auditor's affidavit attesting to these facts is attached as Exhibit "D."

12. We operate a family business which has paid millions of dollars for the rights to sell sub-licenses for boxing broadcasts and, with the increased frequency of signal piracy, our legal sales have eroded significantly.

13. I have recently been informed, by a member of a bar owners association with whom I was conversing, and who was previously a legal customer, that he would no longer be purchasing the fights from my company at the legal broadcast rate. He said it was not out of disrespect for me or my family but sooner risk being caught as a pirate believing that even if he defaults the Court would only grant a small monetary judgment that would be difficult, if not impossible to collect upon. I was astounded at the brazen disregard such individuals have for the law not to mention the rights of my company.

14. It is essential that I communicate to the Court that to the best of my knowledge this programming is not and cannot be "mistakenly or innocently intercepted." Some methods that a signal pirate can unlawfully intercept and broadcast such program illegally are as follows without limitation:

A. The use of a "blackbox" which is purchased for a fee and when installed on a cable TV line will allow for the descrambled reception of a pay-per-view broadcast, or

B. The purposeful misrepresentation of a commercial establishment as a residential property would allow the purchase of a pay-per-view

broadcast between the sum of \$25.00 and \$50.00, or

C. The use of a illegal cable drop or splice from an apartment or home adjacent to the commercial establishment premises who would purchase the broadcast at a residential price and divert the program to the commercial establishment and/or

D. The same initial actions being employed with respect to a "DSS Satellite Systems" or a "C-Band Satellite System."

These forms of satellite theft also involve the misrepresentation of a residential location, purchase of illegal unincryption devices, and/or the purchase of illegal satellite authorization codes which are readily available on the internet and in trade publications. Attached hereto and made a part hereof are various examples of same.

15. Turning these facts to the matter before the Court I have been advised by counsel that the Court has the discretion in the awarding of damages for these nefarious and illegal activities.

16. It is respectfully submitted to this honorable Court that the unchecked activity of signal piracy not only has resulted in my family's business suffering monumental damage, but also has a negative effect upon lawful residential and commercial customers of cable and satellite broadcasting whose costs are necessarily increased significantly by these illegal activities.

17. We, at Joe Hand Promotions, Inc., believe that such acts of piracy have cost us millions of dollars in the last few years while at the same time causing a reduction in our lawful business resulting from the perceived lack of consequence for such unlawful interception.

18. I therefore, humbly ask this Court to grant the allowance for statutory damages due to the fact that such actions are *per se* intentional and do not and cannot occur without the willful and intentional modification of electronic equipment, the business

misrepresentation of a commercial establishment as a residential one or, the removal of cable traps or devices designed to prevent such unauthorized exhibits.

WHEREFORE, your deponent respectfully requests that this Court in its discretion grant judgment by default under 605(a) on COUNT I of the Plaintiff's complaint against the Defendants jointly and severally as follows:

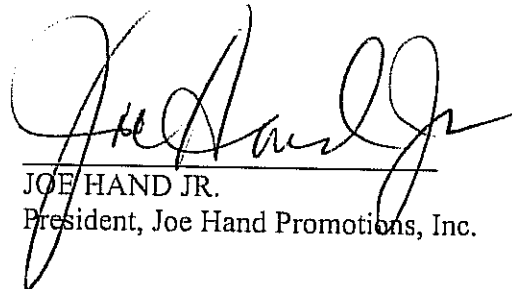
Against RICARDO MARTINEZ Individually,

- 1) under 605(e)(3)(C)(i)(II) a sum *in the discretion of the Court*, of up to TEN THOUSAND DOLLARS (\$10,000.00)
- 2) and under 605(e)(3)(C)(ii) a sum *in the discretion of the Court*, of up to ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for enhanced damages for Defendant's willful violation of 605(a)
- 3) and under 605(e)(3)(B)(I) *in the discretion of the Court*, full costs, reasonable attorney fees as set forth in the attorney affidavit.

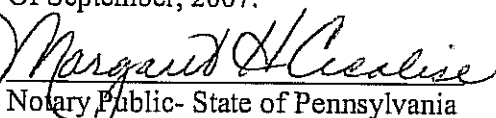
Against, LUCKY 7,

- 1) under 605(e)(3)(C)(i)(II) a sum *in the discretion of the Court*, of up to TEN THOUSAND DOLLARS (\$10,000.00)
- 2) and under 605(e)(3)(C)(ii) a sum *in the discretion of the Court*, of up to ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for enhanced damages for Defendant's willful violation of 605(a)
- 3) and under 605(e)(3)(B)(I) *in the discretion of the Court*, full costs, reasonable attorney fees as set forth in the attorney affidavit

Dated: September 18th 2007


JOE HAND JR.
President, Joe Hand Promotions, Inc.

Sworn to before me on this 18th day
Of September, 2007.


Notary Public- State of Pennsylvania

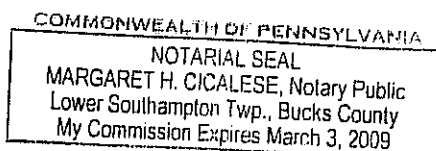


Exhibit A

AGREEMENT MIKE TYSON BOUT

June 11, 2005

Submitted by Joe Hand, Jr., President

Joe Hand Promotions, Inc.

April 4, 2005

INTRODUCTION

Joe Hand Promotions, Inc. (JHP)

Our company is the largest closed-circuit commercial distributor in the United States with the capability to promote, administer and market closed-circuit events. We were the first to exhibit closed-circuit boxing events into race tracks, baseball stadiums, basketball arenas, correctional institutions, colleges and to our armed forces. The administration and control are a major part of the success of our closed-circuit promotion and no other company in the industry comes close to our administrative manpower and resources.

GRANT OF RIGHT

JHP proposes to exclusively administer the closed-circuit commercial distribution of the June 11, 2005 Mike Tyson Fight. The territory will be described as the United States, its Possessions and Territories, Canada, Puerto Rico and the territory listed on Exhibit "A" of this agreement proposal.

ADMINISTRATION

JHP will prepare all documentation necessary to meet the legal requirements of the closed-circuit distribution, including but not limited to:

- Preparing licenses and technical documentation for each location,
- Distribution of marketing and promotional materials,
- Collection of all funds and preparation of sales and revenue reports in a timely and orderly fashion.

MARKETING

Sales

JEP will utilize marketing materials (posters, ad slides, press kits, etc) provided by SHOWTIME (if available). These materials will be used to maximize customer awareness of the June 17, 2008 Mike Tyson Fight.

JEP will provide direct marketing, such as mailing pieces, blast faxes, bulk e-mails and other forms of advertising to create awareness of the program.

JEP maintains a residents sales force of 12 people at our Beaslerville location and plans to utilize other companies throughout the country that will assist in selling this program. Sales personnel are provided with complete documentation on potential customers including names, locations, buying history, size of establishment, etc, in order to help them complete the sale.

It is our intention to utilize the services of other regional closed circuit distributors to maximize the sales and distribution efforts on this program. Any such company will be bound under the same terms and conditions listed in any contract between JEP and SHOWTIME.

Revenue and Profit

JEP will make a concerted effort to discourage the theft of service. In an effort to protect our closed circuit broadcast rights, JEP will monitor, and enforce its own piracy program. JEP will retain all revenue generated from said piracy campaign.

MUTUAL OBLIGATIONS

SHOWTIME

SHOWTIME will provide JEP with reasonable quantities of promotional materials including posters, ad slides and press kits, if available.

For digital dish commercial customers, SHOWTIME will grant JEP permission to enter into agreements with DirectTV and Dish Network to act as authorization equipment for the commercial location customers utilizing that technology to broadcast the event. In some instances, JEP will ask SHOWTIME to assist in the

negotiations with these digital authorization sources in order to reach an agreement on terms for authorizing the requested commercial account.

For public feed commercial customers, SHOWTIME will grant JEP the right to enter into agreements with individual cable system operators to act as authorization sources for its commercial customers utilizing that technology to broadcast the event.

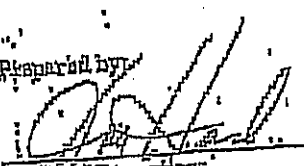
JOINT AND PROMOTIONS

JEP will be responsible for all duties and obligations as outlined in this agreement.

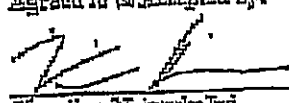
FINANCIAL

As compensation for these exclusive rights, JEP will pay SHOWTIME ~~the sum of~~ 50% of all revenues (less local & state taxes).

Prepared by:


Joe Head Promotions
407 W. Pennsylvania Blvd.
Pensacola, FL 32503
315-364-9000 phone
315-364-5474 fax
jeh@jheadpromotions.com

Agreed to & Accepted by:


Showtime Networks Inc.
1699 Broadway
New York, NY 10019
212-708-1285 phone

Joelle WinLass@showtime.net



June 23, 2005

Joe Hand Promotions, Inc.
407 West Pennsylvania Avenue
Hearstville, Pennsylvania 19053

Attn: Joe Hand, Jr

Re: Gatti vs. Mayweather
June 23, 2005

Dear Joe:

This will confirm the terms of our agreement whereby J & J Sports Productions, Inc. ("J&J" or "promoter") for consideration, hereby grants to you ("you" or "licensee") the right to license, market, exhibit and sell, only within your defined territory within the United States of America (the "territory"), promoter's live telecast of the June 25, 2005 Gatti v. Mayweather program and accompanying undercard matches (each a "program" or "event"), simultaneously with each event, only at commercial closed circuit television exhibition outlets, such as theaters, bars, clubs, lounges, restaurants and the like, each with a fire code occupancy capacity not to exceed 500 persons per outlet (except for casinos), located within the territory. Your territory shall include the following:

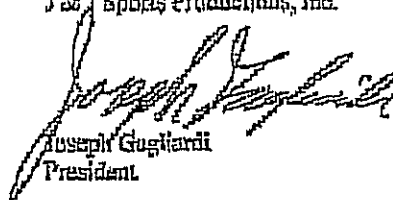
Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia and Wisconsin.

These rights also include the anti-piracy rights, including but not limited to the rights to resolve claims and commence litigation against any identified pirate shipping any portion of the "program" without purchasing the license to exhibit same from you or any approved licensee of J & J Sports Productions, Inc.

Joe Hand Promotions
Ponasterville, Pennsylvania
Page 2 of two

Very truly yours,

J & J Sports Productions, Inc.



Joseph Gugliardi
President

Enc

Exhibit B

Mike Tyson

(50-5, 44KO's)

Vs

Kevin McBride

(32-4-1, 27KO's)

LIVE ON CLOSED CIRCUIT TV

Saturday, June 11, 2005

Live from MCI Center – Washington DC

(blackout in effect)

9:00 pm ET

Undercard Featuring the sensational Laila Ali

RATECARD

\$10.00 x's fire code capacity

\$20.00 per person for casinos

(Plus \$200 DirecTV Authorization Fee)

Call Joe Hand Promotions to order!

800-557-4263

Visit our website at www.joehandpromotions.com

Exhibit C

Jilliana @ Albany	59 N. Pearl St.	Albany	NY	12207		
Jilliana @ Albany	59 N. Pearl St.	Albany	NY	12207		
Jilliana @ Albany	58 North Pearl St.	Albany	NY	11101	FALSE	6/11/2005
Jilliana	3419 Steinway St.	Aspen	NY	11105	FALSE	6/11/2005
Fortin	3650 Ellman Blvd	Aspen	NY	11217		
McGinnis	200 5th Ave.	Brooklyn	NY	11217		
200 Fifth	200 5th Ave.	Brooklyn	NY	11793	FALSE	6/11/2005
Jilliana @ Farmingdale	281 Airport Plaza Blvd.	Farmingdale	NY	11750	FALSE	6/11/2005
Abdell Ezzou	33-31 1st Street	Farmingdale	NY	11757	FALSE	6/11/2005
Polkes Neutral Corner	710 5th St.	Lindenhurst	NY	10010	FALSE	6/11/2005
10 40 Club	8 West 25th St.	New York	NY	10022	FALSE	6/11/2005
Champs @ New York	978 2nd Ave.	New York	NY	10003	FALSE	6/11/2005
Navada Smiths	74 Third Ave.	New York	NY	10019	FALSE	6/11/2005
Playwright	202 W. 49th St.	New York	NY	10022	FALSE	6/11/2005
Sources @ New York East	333 East 20th Street	New York	NY	10001	FALSE	6/11/2005
Sources @ West	533 West 27th St.	New York	NY	10026	FALSE	6/11/2005
Ship O Fools	1890 Second Ave.	New York	NY	14304		
Jacobs	7202 Buffalo Ave.	Niagara Falls	NY	14303	FALSE	6/11/2005
Playarea of Niagara	920 Niagara St.	Niagara Falls	NY	11770		
Sun Moon @ Stars	210 Baywalk	Oneida Beach	NY	14608	FALSE	6/11/2005
Nathaniels	251 Exchange Blvd.	Oneida Beach	NY	10309		
Lions Den Sports Bar	17 Page Ave.	Staten Island	NY	10309		
Lions Den Sports Bar	17 Page Ave.	Staten Island	NY	11104	FALSE	6/11/2005
Full of Pep	4128 Greenpoint Ave.	Somerville	NY	14224	FALSE	6/11/2005
Emifs	3090 Orchard Park Rd	West Seneca	NY	14590	FALSE	6/11/2005
Jilliana @ Westbury	1604 Old Country Rd.	Westbury	NY	10704	FALSE	6/11/2005
Camp Tavern	1044 Yonkers Ave.	Yonkers	NY			

PIRACY AFFIDAVIT

STATE OF NEW YORK :

COUNTY OF NEW YORK :

I, Edgardo Rodriguez, the undersigned, being duly sworn according to law, deposes and says, that on Saturday, June 11, 2005, I observed and the commercial establishment known as, LUCKY 7, located at: 658 Dawson Street ^(E 42nd) BRONX, N.Y. 10455, at approximately 09:25 p.m. This establishment is described as a 4 story building with numerous apartments on top of the establishment.

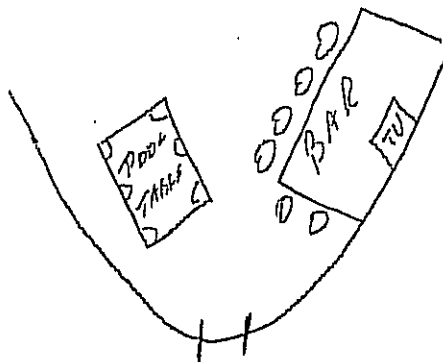
I observed 01 television set, showing the event, which is described and located as follows: A 32 inch color television set behind the bar and in the center.

The television set I observed showed the following: The lower right of the screen showed 2:20 left in round 3 of the Smith an Mitchell fight. Smith is wearing red trunks and black gloves. Mitchell is wearing black and gold trunks with black gloves. Both men are fighting in a blue boxing ring with red, white, and blue ropes.

I was unable to see the cable box or the channel that the television was tuned to.

The inside of the establishment and its internal layout can be described as: A typical licensed establishment that serves alcohol, with chairs and tables.

DRAW DIAGRAM OF INSIDE OF ESTABLISHMENT:



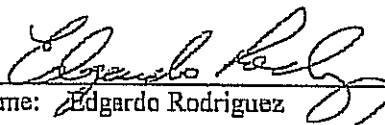
In my opinion, the approximate capacity of this establishment is 100 people. At the time I was in the establishment, I took three head counts. I counted approximately 25 people on the first count, 25 people on the second count, and 25 people on the third count.

I left the establishment at approximately 09:30 p.m.

I took two (2) pictures of the outside of the above described establishment on Tuesday, June 14, 2005 at approximately 8:00 a.m. which are attached hereto and made a part hereof and are intended to substantiate and verify the location of my observations as described herein.

There was not a parking lot adjacent to the establishment.

Dated: 6/20, 2005

Signed: 

Print Name: Edgardo Rodriguez

Agency:

Address: 218 Grange Road

City/State/Zip: Otisville, NY 10963

Phone/fax: (646) 423-2354

State of New York:

County of New York:

On the 20th day of JUNE, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared, Edgardo Rodriguez, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

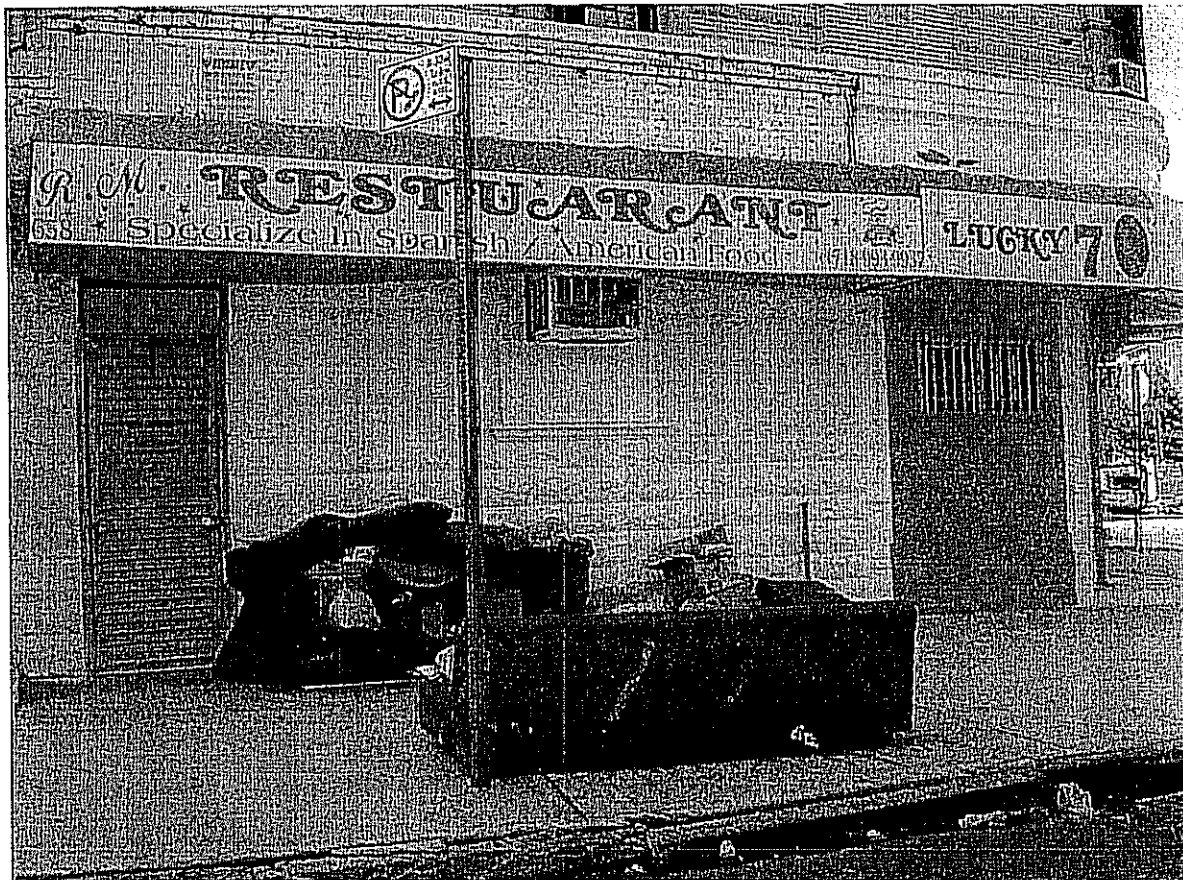
RAFAEL A. CAPELLAN
Notary Public, State of New York
Reg. No. 01CA5077750
Qualified in Orange County
My Commission Expires July 15, 2006



A

DSC01300.JPG

05-7-804



B

DSC01306.JPG

Exhibit B

ECF CASE
JUDGE DANIELS

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

**JOE HAND PROMOTIONS, INC., as
Broadcast Licensee of the June 11, 2005
Tyson/McBride Program**

Plaintiff,

AFFIDAVIT OF ATTORNEY COSTS AND FEES

Civil Action No. 07-CV-6907
HON. GEORGE B. DANIELS

-against-

RICARDO MARTINEZ, Individually and d/b/a
LUCKY 7,
Defendants.

STATE OF NEW YORK :
: SS.:
COUNTY OF ULSTER :

JULIE COHEN LONSTEIN, being duly sworn, deposes and says:

1. That I am the attorney for Plaintiff, Joe Hand Promotions, Inc., in the above referenced matter and I am admitted to practice in this Court. I am fully familiar with all the facts, circumstances and proceedings heretofore had herein.

2. I make this affidavit in support of Plaintiff's motion for default judgment and damages, costs and fees.

3. Plaintiff's litigation expenses as associated with the formation, pleading and filing of the above captioned matter are as outlined below:

- a. Filing Fees - \$ 350.00
- b. Service of Process - \$ 100.00
Attached hereto as Exhibit "A," please find invoice from Mountain Support Services, Inc., reflecting the cost of service upon the Defendants.
- c. Attorneys Fees - \$856.25
See below

Total Litigation Expenses(\$1,306.25)

4. Attorney fees at \$200.00 per hour for attorney time spent and \$75.00 for paralegal time spent are as follows:

<u>Date</u>	<u>Action</u>	<u>(in hours)</u>	<u>Fee</u>	
07/12/2005	Factual research and development	.25	\$50.00	Atty
08/09/2005	Claim Letter issued	.25	\$18.75	Para
01/03/2006	Auditor Certification	.25	\$18.75	Para
07/11/2007	Factual research	.25	\$50.00	Atty
07/25/2007	Complaint drafted, Corporate disclosure	.5	\$100.00	Atty
07/25/2007	Complaint sent to Court	.5	\$37.50	Para
08/08/2007	Arranged Service	.25	\$18.75	Para
08/08/2007	Sent CC of S & C to Chambers	.25	\$18.75	Para
08/17/2007	Review Order	.12	\$25.00	Atty
08/20/2007	Ltr to Defendants with Order	.25	\$18.75	Para
08/31/2007	Reviewed Service	.13	\$25.00	Atty
08/31/2007	Filing/mailling Proofs of Service	.25	\$25.00	Para
10/05/2007	Prepared Request for Default	.5	\$100.00	Atty
10/05/2007	Filed/mailed RFD	.5	\$37.50	Para
10/05/2007	Motion for Continuance	.25	\$50.00	Atty
10/05/2007	Filed and Mailed Motion	.25	\$18.75	Para
10/10/2007	Review Court Order	.12	\$25.00	Atty
10/11/2007	Review Clerk Certificate of Default	.13	\$25.00	Atty
10/15/2007	Draft Motion for Default	1.00	\$200.00	Atty
		Hours	Fee	
		3.25	Atty \$650.00	
		2.75	Para \$206.25	

Total	\$856.25
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5. Plaintiff's counsel's files contain an affidavit attesting to the Defendant's piracy of another event. On June 25, 2005, independent auditor, Richard Rodriguez, entered the Defendant's establishment and observed a portion of the Gatti/Mayweather program being exhibited to approximately 10 individuals in an establishment with an estimated capacity of 75. The auditor's affidavit is attached hereto as Exhibit "B".

6. Plaintiff's counsel's files contain an affidavit attesting to the Defendant's piracy of a third event. On June 10, 2006, independent auditor Jeanette Rodriguez, entered the Defendant's establishment and observed a portion of the Tarver/Hopkins program being exhibited to approximately 8 individuals in an establishment with an estimated capacity of 60. The auditor's affidavit is attached hereto, as Exhibit "C".

6. We respectfully request that judgment be entered in favor of Plaintiff and against the Defendants in the manner stated herein.

WHEREFORE, your deponent respectfully requests that this Court in its discretion grant a judgment by default under 605(a) on COUNT I of the Plaintiff's complaint against the Defendants jointly and severally as follows:

Against, RICARDO MARTINEZ, Individually and d/b/a LUCKY 7,

- 1) under 605(e)(3)(C)(i)(II) a sum *in the discretion of the Court*, of up to TEN THOUSAND DOLLARS (\$10,000.00)
- 2) and under 605(e)(3)(C)(ii) a sum *in the discretion of the Court*, of up to ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for enhanced damages for Defendant's willful violation of 605(a)
- 3) and under 605(e)(3)(B)(iii) *in the discretion of the Court*, costs and Attorney fees of ONE THOUSAND THREE HUNDRED SIX DOLLARS AND TWENTY FIVE CENTS (\$1,306.25).

Dated: October 15, 2007
Ellenville, NY 12428

/s/ Julie Cohen Lonstein
Julie Cohen Lonstein, Esq.
Bar Roll No. JL8512
Lonstein Law Office, P.C.
Attorneys for Plaintiff
1 Terrace Hill; PO Box 351
Ellenville, NY 12428
Telephone: 845-647-8500
Facsimile: 845-647-6277

Sworn to before me this 15TH
day of October 2007.

/s/ April Draganchuk
April Draganchuk
Notary Public State of New York
Registration No. 4945872
Residing in Ulster County
My Commission Expires Jan. 27, 2011

Exhibit A

Description	Amount
INDIVIDUAL SERVICE JHP v. RICARDO MARTINEZ YOUR FILE #05-7-S04 CV #07-6907	100.00
Total	\$100.00

Exhibit B

PIRACY AFFIDAVIT

STATE OF NEW YORK :

COUNTY OF NEW YORK :

I, Richard Rodriguez, the undersigned, being duly sworn according to law, deposes and says, that on Saturday, June 25, 2005 I observed, the commercial establishment known as Lucky 7, located at 658 Prospect Ave, Bronx, NY at approximately 9:12 PM. This establishment is described as a 3 story building with residential apartments above.

I observed 01 television set showing the event, which is described as follows: One 27 inch color television set located behind the bar at the rear of location. On the television sets, I observed Round 2 of the Calderon/Verde event. Calderon is shown wearing silver trunks w/ red and blue trim. Verde is wearing green trunks. The ropes around the ring are red, white and blue. The fighters are on a blue mat with yellow writing. The clock on the lower right corner reads 2:12 of Round 2.

I was not able to see the cable box or the channel that the television was tuned to.

The inside of the establishment and its internal layout can be described as: A typical licensed establishment that serves alcohol .

DRAW DIAGRAM OF INSIDE OF ESTABLISHMENT:



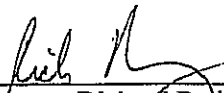
In my opinion, the approximate capacity of this establishment is 75 people. At the time I was in the establishment, I took three head counts. I counted approximately 10 people on the first count, 10 people on the second count, and 10 people on the third count.

I left the establishment at approximately 9:15 p.m.

I took two (2) pictures of the outside of the above described establishment which are attached hereto and made a part hereof and are intended to substantiate and verify the location of my observations as described herein.

There was not a parking lot adjacent to the establishment.

Dated: July 2, 2005

Signed: 
Print Name: Richard Rodriguez
Address: 90 Conners Road
City/State/Zip: Middletown, NY 10941
Phone/fax: (917)716-3439

State of New York)

) ss.:

County of Bronx)

On the 2 day of July, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared, Richard Rodriguez, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

OLGA RODRIGUEZ
Notary Public, State of New York
No. 3-6958
Qualified in Bronx County
Commission Expires 7-1, 2007

Exhibit C

PIRACY AFFIDAVIT

STATE OF :
: SS.:
COUNTY OF :

I, the undersigned, being duly sworn according to law, deposes and says, that on **Saturday, June 10, 2006**, I entered the commercial establishment known as **Lucky 7**, located at **658 Prospect Ave, Bronx, NY** at approximately 10:25pm. This establishment is described as a 4 story building with numerous apartment(s) on top of the establishment. I did not observe a satellite dish on the premises.

I observed **01** television sets, which are described as: size **36** inch color which is located in the following position within the establishment: behind the bartender on the counter.

On the television sets, I observed the **1st round** of the boxing match between the following undercard fighters Hernandez vs. Israel Vasquez.

Israel Vasquez was wearing red trunks w/ white stripes and white lettering and **Hernandez** was wearing red trunks w/ white stripes and lettering. I also observed **the following action in the ring**: Vasquez had blonde hair on top of his head. Both fighters were on a blue mat with yellow writing. The clock on the lower right corner showed Round 1 with less than a minute left in the round.

I also observed the following Pay Per View Logo on the screen: On the lower right corner in gold, black and red.

I **was not** to see the cable box or the channel that the televisions were tuned to.

The inside of the can be described as follows: **A typical bar with with one female bartender serving drinks to patrons sitting in bar chairs watching the event.**

Piracy Affidavit Page -2-

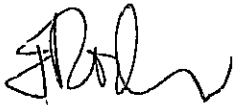
In my opinion, the approximate capacity of this establishment is 60 people. At the time I was in the establishment, I took three head counts. I counted approximately 8 people on the first count, 8 people on the second count, and 8 people on the third count.

I left the establishment at approximately 10:30.

I took two (2) pictures of the outside of the above described establishment on June 17, 2006 and at approximately 7:00am which are attached hereto and made a part hereof and are intended to substantiate and verify the location of my observations as described herein.

There was not a parking lot adjacent to the establishment.

Dated: 7/11, 2006

Signed: 
Print Name: Jeanette Rodriguez
Agency:
Address: 90 Conners Road
City/State/Zip: Middletown, NY 10941
Phone/fax: (914)850-2769
PI #

State of New York

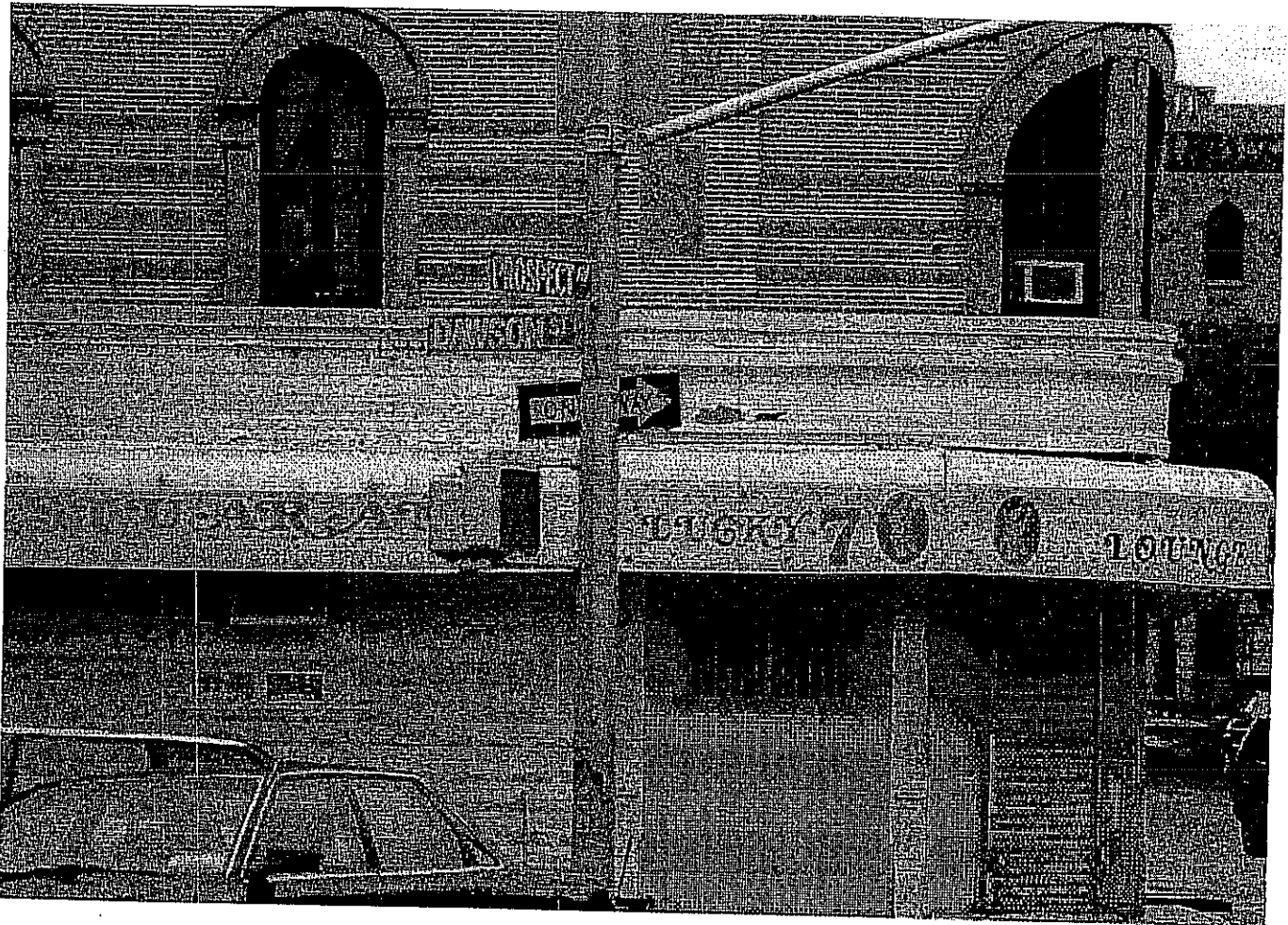
) ss.:

County of New York

On the 11th day of July, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared, Jeanette Rodriguez, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

YANIRIS Y. COLLAZO
Notary Public, State of New York
No. 01CO6106312
Qualified in Bronx County
Term Expires March 1, 2008



06-11-502